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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 638

JULIUS HYMAN,

Petitioner,

vs.

JOSEPH REGENSTEIN (CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, HELEN A. REGENSTEIN, BETTY R. HARTMAN and JOSEPH REGENSTEIN, JR., Co-Executors, substituted in place of Joseph Regenstein, Deceased),

Respondents.

Answer to Petition for Writ of Certiorari

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SUBJECT INDEX OF ANSWER

PAGE

Foreword to Answer 1

Answer to First "Reason for Allowance"

Analysis of evidence showing that the testimony of witness Schneider that Hyman signed an employment agreement with Velsicol Corporation to protec its trade secrets and its property rights in all inventions made during and in the course of his employment is strongly corroborated by oral and documentary evidence and that it is contradicted only by Hyman's unsupported denial that he signed the agreement. If there was perjury on the trials, it was Hyman's not Schneider's. 3

Discussion of the applicable law 7

Answer to Second "Reason for Allowance"

Analysis of the facts showing that it is Hyman, not Regenstein, who has taken a legal position in this case inconsistent with the position taken in the earlier litigations between the parties, and that Hyman is estopped by the judgments in the earlier litigations to relitigate the issues of fact settled by those judgments 8

Answer to Third "Reason for Allowance"

Analysis of the facts showing that no joint adventure ever existed between Hyman and Regenstein. The finding of the Chancellor to that effect is supported by the only credible evidence in the record 12

Conclusion 14

PAGE

Table of Cases Cited

Aetna C. & S. Co. v. Abbott (C. A. 4), 130 F. 2d 40, 43-4 8

Angle v. Shinholt (C. A. 5), 90 F. 2d 294, 296 8

Burnet v. Leininger, 285 U. S. 136, 139-140 13

Doherty Research Co. v. Universal Oil Products Co. (C. A. 7), 107 F. 2d 548, 550 10

Dowdy v. Hawfield (C. A. D. C.), 189 F. 2d 637, 638 8

Eastern Mnfrs., Inc. v Colgate-Palmolive-Peet Co. (D. C. Del.), 16 F. Supp. 469, 477 13

Hartford A. & I. Co. v. Gainesville Natl. Bk. (C. A. 5), 124 F. 2d 97, 99 10

Hauke v. Cooper (C. A. 5), 108 Fed. 922, 924 10

Henning v. Cox (C. A. 5), 148 F. 2d 586, 588-9 13

Hyman v. Velsicol Corporation, 342 Ill. App. 489, 97 N. E. 2d 122 11

Jackson v. Hooper, 76 N. J. Eq. 592, 75 Atl. 568, 571 13

Julius Hyman & Company v. Velsicol Corporation, 123 Colo. 563, 233 P. 2d 977; cert. denied 342 U. S. 870 ..... 2, 6, 9

London Assurance Co. v. Drennen, 116 U. S. 461, 472 .. 13

Magnetic Mfg. Co. v. Dings Magnetic Separator Co. (C. A. 7), 16 F. 2d 739, 741; cert. den. 274 U.S. 740 6

Manacher v. Central Coal Co., 131 N. Y. Supp. 2d 671, 674-7 13

Marshall v. Colgate-Palmolive-Peet Co., 76 F. Supp. 378, 381-5, 388-390, affd. 175 F. 2d 215 6

PAGE

Porter v. Cooke (C. A. 5), 127 F. 2d 853, 857-8 13

Souffront v. Compagnie Des Sucreries, 217 U.S. 475, 486-7 10

T. J. Moss Tie Co. v. Wabash Ry. Co. (C. A. 7), 71 F. 2d 107, 109 8

Toledo Scale Co. v. Computing Scale Co., 261 U. S. 399, 421 7

Vance v. Burbank, 101 U. S. 514, 519-520 7

Velsicol Corporation v. Hyman, 405 Ill. 352, 90 N. E. 2d 717; cert. denied 339 U. S. 966 ..... 2, 6

TEXTS AND RULE CITED

Freeman on Judgments, 5th Ed., §432 10

Freeman on Judgments, 5th Ed., §782, 1241 8

Restatement of Judgments, §84 10

Supreme Court Rule 19(b) 1

CASES DISTINGUISHED OR COMPARED

Dictograph Products Co. v. Sonotone (C. A. 2), 230 F. 2d 131, 137 7

Graver v. Faurot, 162 U. S. 435 8

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U. S. 238, 245 7

Marshall v. Holmes, 141 U. S. 589 8

Southern Pacific Co. v. Bogert, 250 U. S. 483 13

United States v. Throckmorton, 98 U. S. 61 8

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To the Honorable the Chief Justice of the United States and the Justices of the Supreme Court of the United States:

This is another of hundreds of petitions to review decisions of courts of appeals which does not present a question of the character which Rule 19(b) says will move this Honorable Court to exercise its discretion to take the case. We think it apparent that it is here only because petitioner

is determined to carry his fight to the bitter end. This is the sixth of a series of cases growing out of petitioner's breach of confidential relations with Velsicol Corporation and its other stockholders and his fraudulent attempt to appropriate Velsicol's chemical products and processes to his own use and profit. (Findings, R. 2021-22.) The sordid story of his conduct is told in the opinion of the Supreme Court of Illinois, *Velsicol Corporation* v. *Hyman*, 405 Ill. 352, 90 N.E. 2d 717, and in the opinion of the Supreme Court of Colorado, *Julius Hyman & Company* v. *Velsicol Corporation*, 123 Colo. 563, 233 P. 2d 977. This Court denied certiorari in both cases. 339 U.S. 966; 342 U.S. 870, 895.

The three "questions presented for review" rest on assumptions of fact supported only by the testimony of petitioner and contradicted by the testimony of other witnesses, by documentary evidence and by petitioner's course of conduct as the operating executive head of Velsicol Corporation.

The first question rests upon the false assumption that F. P. Schneider was the only witness at the trial of the first Illinois case and of the first Colorado case who testified that Hyman signed the employment agreement with Velsicol to protect its trade secrets and its properly rights in all inventions made during and in the course of his employment and that Schneider testified falsely, whereas Schneider's testimony was strongly corroborated and Hyman's denial that he signed the agreement was unsupported.

The second question rests on the false assumption that Joseph Regenstein, the defendant in the instant case in the District Court and a director of Velsicol and the directing force in the prosecution of the earlier suits

against Hyman, assumed contradictory legal positions, whereas it is Hyman who assumes in this case a legal position directly contradictory of the position he assumed in the earlier litigations.

The third question rests upon the false assumption that Regenstein and Hyman were joint adventurers and that Velsicol was a mere cloak for the venture, whereas all of the evidence in the record, oral and documentary, shows that there was never a joint venture between Regenstein and Hyman.

Respondents, in their argument in opposition, will support each assertion of fact with record references, and will show that none of the cases on which petitioner relies has any application to the fact situation in this case.

Answer to First "Reason for Allowance"

The Facts. Julius Hyman, immediately following the termination of his employment with Pure Oil Company as a research chemist in the fall of 1930, sought financial assistance in setting up a research laboratory to test, prove and exploit inventions covered by two patent applications covering the use of petroleum polymers, a by-product of Pure's refining process, in paint, varnish and resin formulations, and for general research in the chemical field. (R. 141, 199-200, 982, 988-9, 1021, 1230-32, 1247, 1262, 1633-37, 1674-79; Findings, R. 2014-15.) A corporation was organized, herein "Velsicol", with Arvey Corporation and Transo Envelope Company, two companies engaged in manufacturing in which Hyman's discoveries might prove useful, (R. 1630-32,) and Hyman as its stockholders. (Complt. pars. 7-8, R. 22-23; Answ. R. 48-50; Ex. GG, R. 1622, 1630; R. 1683; Findings, R. 2015-16.) Hyman participated in the organization of this corporation in January

1931 and was elected a director and vice-president, and employed as general manager and director of research. Regenstein, the president and majority stockholder of Arvey and Transo, was elected a director and president, and Schneider, the second largest stockholder and general manager of Transo, was elected a director and secretary-treasurer of Velsicol. R. 1032, 1035, 1292-95, 1325, 1343-45, 1639, 1682; Findings, R. 2016.

It was a condition of employment with this chemical research company that all employees sign an agreement to protect Velsicol's trade secrets and its property rights in inventions. (R. 1343, 1438, 1678; Findings, R. 2017-18.) The first four employees, including Hyman, signed such agreements immediately following the organization of the corporation in January 1931 (R. 1657-58, 1666, 1668), and Hyman delivered them to Schneider. (R. 236, 238, 1685-87.) These four employees were also doing work on a secret process of Transo and signed similar agreements with it. (R. 1320, 1658, 1666.) As Velsicol expanded its operations its file of employment agreements grew (R. 238, 1436, 1680) and after 1936 all of these agreements were kept in Velsicol's files under the general supervision of Hyman as its general manager. (R. 243, 1438, 1924.) From 1931 to 1945 Hyman continued as the general manager and director of research of Velsicol and all inventions made during this period were disclosed to Velsicol's patent attorney by or under the direction of Hyman and all applications for patent were assigned to Velsicol simultaneously with their execution. (R. 1352, 1640, 1776-78; Findings, R. 2018.) During all of this period Hyman made no claim that he was not under obligation to assign his inventions to Velsicol. R. 1380, 1688, 1779.

In July 1945 Hyman filed an application covering a newly discovered insecticide with great commercial potentialities,

now called "chlordane," and withheld assignment of the application. (R. 1430, 1473, 1776; Findings, R. 2019.) He refused the demand of Regenstein, as president of Velsicol, that this and a later application be assigned and persisted in his refusal unless he be given a controlling interest in the corporation. (R. 1475-77; Findings, R. 2020-21.) During the course of this dispute Hyman showed unusual interest in the early employment agreements and had photo copies made of those found in the file. (R. 937, 950, 959--961, 1439, 1441.) It was discovered that all of the employment agreements were in the file except Hyman's. R. 1836-37, 1846.

At the trial of the first case Hyman denied signing such an employment agreement with anyone after Velsicol was organized. Schneider, who had retained the Transo agreement, (R. 1687,) produced it and Hyman was forced to admit his signature. (R. 1320-21.) However, he professed to have no recollection of the events of signing and delivering the first four pairs of agreements, (R. 1314-20,) though he admits that those produced were probably signed in the laboratory, (R. 1315,) and he assumes that he requested the other employees to sign these agreements and that he delivered them to Schneider. (R. 1315, 1317, 1319.) Hyman admits that he had signed such agreements with each of his earlier employers,—International Filter Company in 1925, (R. 1288,) Transo in 1926 (R. 1228) and Pure Oil in 1928, (R. 1227,) and he admits that this was a usual requirement of research companies. R. 1277-79.

Herbert Mayer, one of the first employees, testified that Hyman signed the Velsicol agreement and the Transo agreement in his presence and carried them and the agreements signed by him and the other two employees away with him on January 30, 1931. (R. 1656-58, 1668-69.) Schneider says the four pairs of signed agreements were delivered

to him by Hyman and that he put them in file envelopes and placed them in the Transo safe. (R. 1685-86.) Regenstein says he saw the agreements, including the Velsicol agreement signed by Hyman, on Schneider's desk when Schneider was preparing to file them. (R. 236, 238.) When Velsicol moved from the Arvey-Transo premises to a new location in 1942, the agreement file was delivered to Hyman with other Velsicol papers. (R. 243, 1957-58.) There is no contradiction of Schneider's testimony, except Hyman's uncertain denial of signing and delivering his agreement with Velsicol.

The question of the execution and delivery of this agreement was a crucial question in the first Illinois suit (exs. J-1 thru J-8, R. 1606-07) and in the first Colorado suit, (exs. K-1 thru K-9, R. 1612-13) and Hyman, Schneider and Regenstein all testified on the issue. In the Illinois suit (405 Ill. 352, 90 N.E. 2d 717, 719-724) and in the Colorado suit (123 Colo. 563, 233 P. 2d 977, 991, 996,) it was found that Hyman did sign and deliver the Velsicol agreement as Schneider testified. Both courts analyzed the evidence and found that Schneider's testimony was corroborated by the testimony of Regenstein and by all of the facts and circumstances in evidence, and they found that Hyman's testimony was uncorroborated and was contradicted by his course of conduct over a period of 16 years and by the normal course of companies engaged in research requiring agreements to protect their trade secrets and their property in inventions made in the normal course of business. *Cf. Magnetic Mfg. Co.* v. *Dings Magnetic Seperator Co.* (C.A. 7), 16 F. 2d 739, 741, cert. den. 274 U.S. 740; *Marshall* v. *Colgate-Palmolive-Peet Co.*, 76 F. Supp. 378, 381-5, 388-390, affd. 175 F. 2d 215.

Degginger, on whose testimony Hyman relies for corroboration, admitted on cross-examination that he did not

know whether Hyman signed an agreement with Velsicol. (R. 773.) The story of the April 1953 California barroom incident, told by Hyman and the detective that he employed to trap Schneider into making some statement inconsistent with his 1947 testimony, furnishes no corroboration to Hyman's claim that he did not sign the agreement. Both Hyman and the detective admit that Schneider responded to Hyman's assertion that Schneider knew that Hyman did not sign the Velsicol agreement,—"Oh, yes, you did. I saw the paper. I had it.". R. 1773, 1902.

The perjury in this case, if there was intentional false swearing, is Hyman's, not Schneider's.

The Law. This is not an original action to secure relief from a judgment for fraud nor is it an action to enforce a judgment allegedly obtained by fraud. In this case Hyman seeks, six years after the entry of the judgments against him, to re-try exactly the same question of fact which was fully and separately tried in the first Illinois case and in the first Colorado case. No case has held, or even suggested, that an unsuccessful party may have a second try (here a third try) to sustain his position where an issue of fact has been fully tried and a decision made on conflicting evidence. *Cf. Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238, 245; *Dictograph Products Co.* v. *Sonotone*, (C.A. 2) 230 F. 2d 131, 137.

The rule which prevents a collateral attack on a judgment by reason of alleged perjury in obtaining the judgment is merely a corollary of the rule that courts will not permit re-litigation of matters which were directly in issue in earlier litigation, were fully tried with opportunity to present all the evidence on the question and were concluded by a judgment. *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U. S. 399, 421; *Vance* v. *Burbank*, 101 U.S.

514, 519-520; *Angle* v. *Shinholt* (C.A. 5), 90 F. 2d 294, 296; *T. J. Moss Tie Co.* v. *Wabash Ry. Co.* (C.A. 7), 71 F. 2d 107, 109; *Aetna C & S. Co.* v. *Abbott* (C.A. 4), 130 F. 40, 43-4; *Dowdy* v. *Hawfield* (C.A.D.C.), 189 F. 2d 637, 638; Freeman on Judgments, 5th Ed., § 782, 1241.

The decisions in *United States* v. *Throckmorton*, 98 U.S. 61 and *Marshall* v. *Holmes*, 141 U. S. 589, have no application to the fact situation in the case at bar. There is here no credible evidence of fraud, extrinsic or intrinsic, in the obtaining of the judgments in favor of Velsicol and against Hyman in the earlier litigations. This Court is invited by petitioner to accept as a fact Hyman's statement that perjury was committed by Schneider in the earlier trials, solely on the basis that he contradicted Schneider's testimony, and then to engage in the burdensome and useless academic exercise of the extrinsic-intrinsic dichotomy of fraud. (*Cf. Graver* v. *Faurot*, 162 U.S. 435.) Whatever uncertainty exists, if any, by reason of the alleged conflict between the opinions in *United States* v. *Throckmorton* and *Marshall* v. *Holmes*, a solution of this uncertainty would not change the result in this case.

Answer to Second "Reason for Allowance"

Again the court is asked to indulge in the unsupported assumption that Regenstein assumed one legal position in the first Colorado case and another legal position in the instant case.

Regenstein's position has been consistent through all of the six cases,—that is, that Velsicol was the owner of all property rights in its trade secrets and in the inventions made during and in the course of the employment of Hyman as its general manager and director of research, that he was not the *alter ego* of Velsicol, that neither he nor

Hyman held title to any of Velsicol's property, that Hyman's interest was limited to his stockholder interest in Velsicol and that his interest was limited to his stockholder interest in Arvey and Transo which in turn were the majority stockholders in Velsicol, and that Hyman could not grab Velsicol's property to satisfy an alleged claim against Regenstein. Answ. pars. 9, 10, 15-45, 50; R. 50-54, 56-59, 64; R. 208.

On the contrary, Hyman's position in the instant case cannot be reconciled with the position he took in the earlier litigations. In the first Illinois case and the first Colorado case Velsicol brought against Hyman to recover its property, Hyman took the position that he was the sole owner of inventions made by him during the course of his employment with Velsicol, but he conceded that Velsicol had a shop right to use the inventions. (Ex. J-2, R. 1606; Ex. K-2, R. 1612; 123 Colo. 563, 233 P. 2d 977, 1002[7].) In the instant case he takes the position that these inventions were owned by a joint venture of his and Regenstein's in which he had only a 20% participation. (Complt. pars. 5, 14, 46; R. 21, 25, 31; Answ., R. 47, 55, 59; R. 1267.) The first time Hyman asserted a defense based on the joint adventure theory was after the decrees had been entered against him in the first Illinois case and the first Colorado case in 1948, when he filed his fifth defense in the second Colorado case in 1950. (Ex. G-2, R. 1613-15.) In the meantime he had filed two answers in suits by Velsicol and he had filed a complaint against Velsicol and its directors and stockholders, and he had not suggested to his attorneys that a joint venture existed between him and Regenstein. R. 1652.

The rule applied by the Court of Appeals in holding that Hyman is bound by the judgments in the earlier litigations

between him and Velsicol and that Regenstein may plead these judgments in bar of a retrial of the question of fact of Hyman's executing and delivering the agreement with Velsicol is well established. A.L.I. Restatement of Judgments, §84; Freeman on Judgments, 5th Ed., §432; *Souffront* v. *Compagnie Des Sucreries*, 217 U.S. 475, 486-7; *Hauke* v. *Cooper* (C.A. 5), 108 Fed. 922, 924; *Hartford A. & I. Co.* v. *Gainesville Natl. Bk.* (C.A. 5), 124 F. 2d 97, 99; *Doherty Research Co.* v. *Universal Oil Products Co.* (C.A. 7), 107 F. 2d 548, 550.

There can be no dispute of the facts which makes the rule of the binding effect of these judgments applicable in this case. (Findings, R. 2022.) Hyman alleges in his complaint (pars. 7, 55, 60, 66, 69, 70) that Regenstein was the real party in interest and that Regenstein *caused* Velsicol to institute the earlier suits and to prosecute them to conclusion. (R. 23, 34-41.) Hyman testified that he had always considered that Regenstein was the moving force behind the institution and prosecution of these suits and that he knew of Regenstein's activity in connection therewith and of his interest in the outcome thereof. He said of the first case "I knew that he was the party in interest. He was the man who would stand to gain most if Velsicol were to prevail in that suit against me." R. 1648-1651.

There is one case in the series where Regenstein was a record party and no resort to the disputed rule is necessary. In the suit filed by Hyman challenging the validity of the recapitalization of Velsicol in 1946, Regenstein was made a defendant in his personal capacity and Hyman sought a personal judgment against Regenstein. (Complt. par. 58, R. 36; Answ. R. 67, 74-78; Ex. A, R. 1608-11; Findings, R. 2022.) It was litigated and determined in that suit that Velsicol was a duly organized Illinois corporation, that the

business and affairs of Velsicol were at all times managed by a board of five directors, that the recapitalization was in all respects proper and valid, that after the recapitalization and exercise of rights by Arvey and Transo to purchase additional shares and the failure of Hyman to exercise his right to purchase a proportional number of shares Hyman owned 400 of the 56,400 outstanding shares of Velsicol, that the interest of Hyman in said business was fully represented by his 400 shares, that Hyman had no other interest in the assets or business of Velsicol except as such shareholder, and that Regenstein had breached no obligation to Hyman. *Hyman* v. *Velsicol Corporation*, 342 Ill. App. 489, 97 N.E. 2d 122.

It will be observed that Hyman did not allege in the suit that he instituted against Regenstein and others in 1946 that he and Regenstein were joint adventurers in the subject business undertaking, but he alleged that the undertaking was that of an Illinois corporation and that he was a shareholder and director of said corporation and its operating executive throughout the period from January 1931 to September 1946. Had the situation been as Hyman alleges in the instant complaint, his remedy would have been the dissolution of the joint adventure and an accounting, as he belatedly seeks in the instant case, and not an attempt to keep the share ownership in the corporation in *status quo*.

The decree entered in the recapitalization case, (ex. I-5, R. 1608-12,) in which Hyman and Regenstein were record parties, is conclusive of every question of fact and law essential to recovery in the instant case and is an inescapable bar to this suit. The decree could not have been entered except upon a determination contrary to Hyman's position in the instant case.

Answer to Third "Reason for Allowance"

The facts we have already stated show so conclusively that no joint venture ever existed between Hyman and Regenstein that argument is unnecessary. During all the 16 years Hyman was the operating head of Velsicol and was assigning his inventions to Velsicol in regular course, he never claimed that a joint adventure existed between him and Regenstein. (R. 721, 1293, 1642, 1652, 1687, 1693-4, 1696, 1779, 1781.) The accounting ordered in the earlier litigations was always to the corporation, never to a joint venture or partnership. R. 1652.

Hyman's description of the business of the corporation and the relation of the employees thereto, including himself, in the series of verified written applications to the Salary Stabilization Unit, is in direct contradiction of his claim that Velsicol was the personal undertaking of him and Regenstein. (Ex. IIII, R. 1414-16, 1627, 1630.) As the operating executive officer of Velsicol, Hyman made contracts for the corporation and requested Schneider as secretary to attest and seal contracts, (*e.g.*, ex. NNNN, R. 1420,) and he filed regularly on the corporations' behalf federal tax returns, (exs. VVV, WWW, XXX, AAAA; R. 1400, 1403-5, 1407-8,) applications to governmental agencies for various permits, (exs. HHH, BBBB, CCCC, R. 1346, 1408-10,) corporate returns to states (exs. YYY, JJJJ, R. 1406, 1416) and other corporate reports and applications. (Exs. ZZZ, KKKK, OOOO, R. 1407, 1418, 1420-21.) These forms made specific requirements for signing papers filed by partnerships and for papers filed on behalf of corporations and Hyman always used the corporation form. (R. 1346, 1405, 1409, 1410; Findings, R. 2017.) He filed income tax returns for the corporation (R. 1403-5) instead of an information return for a joint adventure.

He reported as his income from the business his salary and not a share of the profits of the business. (Exs. VVV, WWW, XXX, R. 1400, 1403.) Either these returns and reports made by Hyman as executive vice-president of Velsicol were fraudulent and in violation of government regulations, or Hyman's belated contention that Velsicol was a joint adventure masquerading as a corporation is false and a fraud upon the court.

The Chancellor reviewed the facts (R. 2014-2017) and found that no joint adventure ever existed between Hyman and Regenstein. (R. 2017, 2022.) When the false peg that a joint venture existed gives way, there is nothing on which to hang petitioner's argument in support of his third "question presented for review."

The facts being what they are, *Southern Pacific Co.* v. *Bogert,* 250 U.S. 483, and other cases cited by petitioner, do not have the slightest application. Among the scores of cases supporting the judgment below that Hyman cannot recover on a joint venture theory are *Burnet* v. *Leininger*; 285 U.S. 136, 139-140; *London Assurance Co.* v. *Drennen,* 116 U.S. 461, 472; *Henning* v. *Cox* (C.A. 5), 148 F. 2d 586, 588-9; *Porter* v. *Cooke* (C.A. 5), 127 F. 2d 853, 857-8; *Eastern Mnfrs., Inc.* v. *Colgate-Palmolive-Peet Co.* (D.C. Del.), 16 F. Supp. 469, 477; *Jackson* v. *Hooper,* 76 N.J. Eq. 592, 75 Atl. 568, 571; *Manacher* v. *Central Coal Co.,* 131 N.Y. Supp. 2d 671, 674-7. Under the admitted facts, there was never a joint adventure between Hyman and Regenstein.

Conclusion.

This petition does not present a single question of the character which should move this Honorable Court to grant further review. The Court of Appeals fully considered and correctly decided every question presented for review on petitioner's appeal.

Justice requires that this litigation be brought to an end. Respondents humbly pray that the petition be denied.

Respectfully submitted,

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